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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 WILLIAM RAY BARTON,  
12 Petitioner,

13 v.

14 PEOPLE STATE OF CALIFORNIA, et  
15 al.,  
16 Respondents.

Case No. CV 18-05863 FMO (RAO)

MEMORANDUM AND ORDER RE  
SUMMARY DISMISSAL OF  
PETITION FOR WRIT OF  
HABEAS CORPUS AND DENIAL  
OF CERTIFICATE OF  
APPEALABILITY

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18 **I. BACKGROUND**

19 On March 2, 2018, Petitioner William Ray Barton (“Petitioner”) filed a  
20 Petition for Writ of Habeas Corpus (“Petition”) in the Northern District of  
21 California. Pet., Dkt. No. 1. The Petition was transferred to the Central District of  
22 California on June 28, 2018. Dkt. No. 5.

23 Petitioner was convicted of his underlying criminal offense in 1976. Pet. at  
24 2. Petitioner seeks to return to his sentencing court for the purpose of submitting  
25 evidence relevant to a youth offender parole hearing. *Id.* at 3. Petitioner indicates  
26 that he is “awaiting proceedings” in the California Supreme Court, and that his  
27 “writ is being processed” in an unspecified court. *Id.* at 5, 6. Records of the

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1 California Supreme Court do not reflect the filing of any habeas petitions by  
2 Petitioner.<sup>1</sup>

3 The Court issued a screening order on July 9, 2018, directing Petitioner to  
4 submit a response explaining his exhaustion of state remedies. Dkt. No. 8. On  
5 August 3, 2018, Petitioner filed a response, which appears to be a handwritten copy  
6 of portions of the Court's July 9 screening order. Dkt. No. 9.

## 7 **II. DISCUSSION**

8 A state prisoner must exhaust his state court remedies before a federal court  
9 may consider granting habeas corpus relief. 28 U.S.C. § 2254(b)(1)(A); *O'Sullivan*  
10 *v. Boerckel*, 526 U.S. 838, 842, 119 S. Ct. 1728, 144 L. Ed. 2d. 1 (1999). To satisfy  
11 the exhaustion requirement, a habeas petitioner must fairly present his federal  
12 claims in the state courts in order to give the State the opportunity to pass upon and  
13 correct alleged violations of the prisoner's federal rights. *Duncan v. Henry*, 513  
14 U.S. 364, 365, 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995) (per curiam). A habeas  
15 petitioner must give the state courts "one full opportunity" to decide a federal claim  
16 by carrying out "one complete round" of the state's appellate process in order to  
17 properly exhaust a claim. *O'Sullivan*, 526 U.S. at 845. He must present his claims  
18 to the highest state court with jurisdiction to consider it or demonstrate that no state  
19 remedy remains available. *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir.  
20 2003) (en banc).

21 Under Rule 4 of the Rules Governing Section 2254 Cases in the United  
22 States District Courts, the Court may dismiss a petition "[i]f it plainly appears from  
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24 <sup>1</sup> The Court takes judicial notice of the records of the California Supreme Court,  
25 which are available at <http://appellatecases.courtinfo.ca.gov>. See Fed. R. Evid.  
26 201(b)(2) (providing that a court may take judicial notice of adjudicative facts that  
27 "can be accurately and readily determined from sources whose accuracy cannot  
28 reasonably be questioned"); *Harris v. Cty. of Orange*, 682 F.3d 1126, 1131-32 (9th  
Cir. 2012) (noting that a court may take judicial notice of federal and state court  
records).

1 the petition and any attached exhibits that the petitioner is not entitled to relief in  
2 the district court.” The “Ninth Circuit has held that a federal court may raise the  
3 failure to exhaust issue *sua sponte* and may summarily dismiss on that ground.”  
4 *White v. Paramo*, Case No. CV 16-03531-ODW (KES), 2016 WL 3034669, at \*2  
5 (C.D. Cal. May 27, 2016) (citing *Granberry v. Greer*, 481 U.S. 129, 134-35, 107 S.  
6 Ct. 1671, 95 L. Ed. 2d 119 (1987); *Stone v. San Francisco*, 968 F.2d 850, 856 (9th  
7 Cir. 1992); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1982) (per curiam))  
8 (dismissing petition for failure to exhaust state remedies with respect to sole claim  
9 for relief).

10 Here, Petitioner does not claim to have brought before the California state  
11 courts his request to return to his sentencing court, and the records of the California  
12 Supreme Court do not reflect any such actions instituted by Petitioner. Although  
13 the exhaustion requirement may be excused under limited circumstances, *see* 28  
14 U.S.C. § 2254(b)(1)(B)(i)-(ii), Petitioner has not provided any reasons in his  
15 response as to why he should be excused from the exhaustion requirement. It thus  
16 is apparent that Petitioner has failed to exhaust his claim in state court, and  
17 summary dismissal of this action is appropriate.

18 Dismissal of the Petition is without prejudice to Petitioner’s later pursuing  
19 habeas relief in federal court upon exhausting available remedies in the state courts.  
20 Petitioner is warned, however, that under 28 U.S.C. § 2244(d)(1), “[a] 1-year period  
21 of limitations shall apply to an application for a writ of habeas corpus by a person  
22 in custody pursuant to the judgment of a State court.”

### 23 **III. CERTIFICATE OF APPEALABILITY**

24 Under the Antiterrorism and Effective Death Penalty Act of 1996, a state  
25 prisoner seeking to appeal a district court’s final order in a habeas corpus  
26 proceeding must obtain a Certificate of Appealability (“COA”) from the district  
27 judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may issue “only if the  
28 applicant has made a substantial showing of the denial of a constitutional right.”

1 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that  
2 jurists of reason could disagree with the district court’s resolution of his  
3 constitutional claims or that jurists could conclude the issues presented are adequate  
4 to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322,  
5 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

6 When the Court dismisses a petition on procedural grounds, it must issue a  
7 COA if the petitioner shows: (1) “that jurists of reason would find it debatable  
8 whether the petition states a valid claim of the denial of a constitutional right”; and  
9 (2) “that jurists of reason would find it debatable whether the district court was  
10 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct.  
11 1595, 146 L. Ed. 2d 542 (2000).

12 Here, the Court is summarily dismissing the instant Petition without  
13 prejudice because the Court has determined that Petitioner has failed to exhaust his  
14 habeas claim in state court. The Court finds that Petitioner cannot make the  
15 requisite showing that jurists of reason would find it debatable whether the district  
16 court was correct in its procedural ruling.

#### 17 **IV. ORDER**

18 Based on the foregoing, IT IS ORDERED THAT:

- 19 1. The Petition is **DISMISSED** without prejudice; and  
20 2. A Certificate of Appealability is **DENIED**.

21  
22 DATED: August 17, 2018

23 \_\_\_\_\_/s/\_\_\_\_\_  
24 FERNANDO M. OLGUIN  
25 UNITED STATES DISTRICT JUDGE

26 Presented by:

27 \_/S/ Rozella A. Oliver\_\_\_\_\_  
28 ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE